IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 200 of 2004

with
Civil Application No.681 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO. LTD

Versus

BHIKHIBEN RAMBHAI RATHOD

Appearance:

1. First Appeal No. 200 of 2004

MR RAJNI H MEHTA for Petitioner No. 1

MR AMIT V THAKKAR for Respondent No. 1

RULE UNSERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 04/05/2004

ORAL JUDGEMENT

1. The appellant-United India Insurance Company Limited, by filing this appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the judgment and order dated December 12, 2003, passed by the Motor Accident Claims Tribunal (Aux.), Surat, below application Exh.6 filed by the claimant under Section 140 of the Act, in MACP No.651 of 2002, by which, the appellant was directed to deposit Rs.25,000/- as interim compensation together with interest at the rate of 9% per annum from the date of application till realisation.

2. The appeal was admitted by the Court (Coram: N.G. Nandi, J, as he then was) on February 6, 2004. Pursuant to the order passed in Civil Application No.681 of 2004, the appellant-Insurance Company had already deposited the awarded amount along with interest with the Tribunal.

3. Heard the learned advocates for the parties.

4. The award under Section 140 is in the nature of an interim award which is subject to adjustment against the final award, which may be passed in the main claim petition, being M.A.C.P. No.651 of 2002, pending before the Motor Accident Claims Tribunal (Aux.), Surat. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala reported in 2001 (4) JT 477.

5. However, in view of the contentions raised in the appeal by the Insurance Company, it would be proper to give the following directions.

6. The original claimant shall file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

7. On the said undertaking being filed, 30% of the amount awarded shall be permitted to be withdrawn by the claimant without security. The remaining 70% of the amount shall be invested in a Cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the

Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

8. Subject to the observations and directions hereinabove, the appeal and the civil application are disposed of accordingly with no order as to costs.

(M.H. Kadri, J.)

(swamy)